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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

JAMES ARNETT,

Plaintiff,

vs.

BENJAMIN SNOW HOWARD, LIFELINE
MEDIA LLC, a Texas entity, NATIONWIDE
AFFORDABLE HOUSING, a Texas
corporation, and the BEN HOWARD TRUST,
an IDAHO TRUST,

Defendants.

CASE NO. CV-12-0311-TUC-DCB-DTF

**RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
ADMONISHING PRACTICE**

**(Assigned to Magistrate Judge D.
Thomas Ferraro)**

This Court should either deny or simply disregard Plaintiff James Arnett's ("Arnett")
"Motion for Admonishing Practice" on the following grounds:

1. Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that a request for a court order made by motion must "state with particularity the grounds for seeking the order; and state the relief sought."
2. Mr. Arnett has provided absolutely no basis in law or legal grounds whatsoever for

1 his Motion. Neither the Federal Rules of Civil Procedure nor Ninth Circuit case law
2 provides a legal basis for such a motion or request. There are also no statutory bases
3 for Mr. Arnett's request.

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- 5 3. Mr. Arnett has also failed to state exactly what legal relief he seeks—other than for
6 this Court to scold Defendants' counsel for practicing law, advocating for
7 Defendants, and pointing out the legal and factual deficiencies in Mr. Arnett's case
8 and filings.
- 9 4. Mr. Arnett's request is based in large part on his lack of understanding of basic legal
10 rules, principles, and litigation practice. For example: Mr. Arnett attempts to make
11 Defendants' motion to dismiss out to be their "de facto answer" to his complaint,
12 when Rule 12 of the Federal Rules of Civil Procedure clearly provides for such
13 motions to be decided prior to filing an official answer.
- 14 5. Mr. Arnett also takes issue with Defendants' legal arguments—in an apparent
15 attempt to have the Court reprimand Defendants for advocating their position. The
16 time for refuting or contradicting Defendants' legal arguments was in the briefing for
17 the respective motions themselves, not in a subsequent motion such as this. Mr.
18 Arnett has already had his opportunities to put forth his best arguments in response to
19 what Defendants have submitted to the Court.
- 20 6. Mr. Arnett continually seems to misunderstand basic aspects of litigation—such as
21 the standard of review for a motion to dismiss, or the bases for federal subject matter
22 jurisdiction. Mr. Arnett has mentioned that he is not trained in the law, yet he seeks
23 to censure the way Defendants' counsel practices law. Mr. Arnett's personal outrage
24 to Defendants' written filings appears to arise out of his fundamental
25 misunderstandings of the law, civil procedure, and normal litigation practices.
- 26 7. Defendants have not misled this Court in any way, and have not engaged in any
27 unethical or improper legal practices. Defendants' arguments have pointed out the
28

1 legal reasons why Mr. Arnett's complaint and other filings are frivolous and
2 unpersuasive, and how they fail to state a proper case. Defendants' counsel has an
3 ethical obligation to advocate for Defendants, and will continue to do so despite Mr.
4 Arnett "taking exception" to it. In reality, this Court has nothing to admonish. If
5 anything, the Court could more reasonably admonish Mr. Arnett for unnecessarily
6 driving up the costs of this pointless litigation due to his misunderstandings of the
7 law.
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9 For these reasons, this Court should deny and/or simply disregard Plaintiff's Motion for
10 Admonishing Practice.

11 RESPECTFULLY SUBMITTED this 11th day of March, 2013.

12
13 **DAVIS MILES MCGUIRE GARDNER, PLLC**

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15 By /s/ Scott F. Gibson
16 Scott F. Gibson
17 80 E. Rio Salado Pkwy., Ste. 401
18 Tempe, AZ 85281
19 *Attorneys for Defendants*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR ADMONISHING PRACTICE** was served upon all persons entitled to receive notice in this case via ECF notification or by U.S. Mail on March 11, 2013 to the following:

Magistrate Judge D. Thomas Ferraro
United States District Court
Evo A. DeConcini U.S. Courthouse
405 West Congress Street, Suite 6660
Tucson, AZ 85701

James Arnett
9288 N. Monmouth Court
Tucson, AZ 85742
Plaintiff Pro Per

/s/ Annette T. Hernandez